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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/608,790

06/27/2003

Alan Michael Jaffee

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7590  
JOHNS MANVILLE  
Legal Department  
10100 West Ute Avenue  
Littleton, CO 80127

02/24/2009

EXAMINER

STEELE, JENNIFER A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

02/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/608,790	<b>Applicant(s)</b> JAFFEE, ALAN MICHAEL	
	<b>Examiner</b> JENNIFER STEELE	<b>Art Unit</b> 1794	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 11 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-3,5,7,9,11-23,25-29 and 31-34.  
 Claim(s) withdrawn from consideration: 30.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/J. S./  
 Examiner, Art Unit 1794

/Elizabeth M. Cole/  
 Primary Examiner, Art Unit 1794

Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are not persuasive.

Applicant argues that Examiner did not consider the Affidavit submitted on 12/26/2006 showing evidence of unexpected smoothness. Examiner stated that the evidence was not sufficient to overcome the 103 rejection because the smoothness of the results presented only differ by a standard error of 7.6% (Sample #2 - Invention) and 9.3% (Sample #4 - Duraglass). This is not an unexpected difference. The evidence is also not commensurate with the scope of the claims which do not recite that the board is smooth. In addition, Samples #1-3 represent the invention with different fiber diameters and have smoothness standard errors of 9.5%, 7.6% and 8.3%. The Duraglass Sample #4 has the same fiber diameter as the invention and a smoothness standard error of 9.3%. Further, the evidence introduces other variables such as fiber length while failing to establish the criticality of the claimed range of fiber diameter as well as percentage of fibers of that diameter produces an unexpected result.

Applicant argues that the reference to Gill would lead the skilled artisan away from combining with the references to Lehnert and Graves as Gill teaches a glass fiber mat resistant to strikethrough and Applicant's mat is required to be porous. Gill teaches the features of utilizing a fine glass fiber diameter in the claimed range. Gill is referenced by Graves. Gill teaches porosity of the mat can be optimized by changing the fiber diameter. Gill's mat is resistant to strikethrough as Gill's mat has a different binder system, however that does not preclude one of ordinary skill in the art from combining the known features of Gill, that are also referenced in Graves and then combining these known features with Graves and Lehnert to produce a mat that has the claimed structure and property of porosity recited in independent claim 32 and dependent claim 34.

Applicant states that the rejection over Lehnert, Graves, Gill fails to disclose the particular binders and Examiner references Kajander to show that these binders are known in the art. Applicant argues that Kajander fails to teach the glass fiber sizes and amounts and therefore Kajander fails to cure the deficiencies of Lehnert, Grave and Gill. As noted, Kajander is relied upon for teaching that it is known in the art to produce a glass fibrous mat with binders as taught by Kajander. Similarly, Carbo is referenced to teach that it is known in the art to employ antifungal agents in fibrous mats and therefore one of ordinary skill in the art would have looked at Carbo to find a solution to producing a fibrous mat with antimicrobial properties.